

**TRAVEL TIME AS "HOURS OF WORK" UNDER FAIR LABOR
STANDARDS ACT (FLSA)**

I. PURPOSE

This Directive states the instances under which an employee may consider travel time as "hours of work" under the Fair Labor Standards Act (FLSA).

II. COVERAGE

- A. Employee Coverage. This Directive applies to employees covered (nonexempt) under FLSA when travel time meets the conditions stated below. (Attachment 1 provides a list of these employees.)
- B. Geographic Coverage. The provisions of FLSA apply in the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, and other U.S. territories. FLSA provisions do not apply in foreign areas, except where specifically stated under other laws, regulations, or policies.

III. GENERAL

FLSA does not repeal or modify other pay laws. It provides the minimum pay to which nonexempt employees are entitled. Employees will continue to receive pay benefits under Title 5 U.S. Code (such as night and Sunday differential and holiday premium pay) even though overtime may be paid under FLSA. See APHIS Directive 402.2, Premium Pay, and the MODE Time and Attendance Handbook for additional information on premium pay.

IV. POLICY

Nonexempt employees are entitled to overtime pay for all hours of actual work over 40 hours in a week which management "suffers or permits" to be performed. Nonexempt employees should have their supervisor's approval before performing work outside normal work hours. Supervisors are responsible to insure that nonexempt employees do not work outside normal hours unless they have been ordered to do so, or clearly have been advised that overtime may be approved after the fact.

V. DEFINITIONS

- A. Authorized Travel. Travel which is performed:
 - 1. Under the direction or control of a responsible APHIS official, and
 - 2. For the benefit of APHIS.
- B. Official Duty Station. Generally the corporate limits of the city or town to which an employee is permanently assigned. If the city or town is not incorporated, the official duty station is the established area having definite boundaries. For personnel with assignments to more than one duty point, the official duty station includes all of these points. For personnel whose regularly scheduled duties involve assignments to multiple duty points on a rotational basis, the official duty station is any of the designated multiple rotating duty points within the predesignated area.
- C. Job Site. A duty location within the limits of the official duty station that is other than the employee's normal duty location.

- D. Temporary Duty Station. An assignment to a duty station outside the limits of an employee's official duty station. The boundaries of the temporary duty station are determined in the same way as the boundaries of the official duty station.
- E. Normal Waiting Time. The idle time involved when common carrier rules require an employee to arrive at a terminal at a designated predeparture time (e.g., 45 minutes prior to scheduled departure time), or when an employee has to wait for a connecting flight to continue travel.
- F. Regular Working Hours.
 - 1. The clock hours of an employee's workday when an employee is expected to be on duty, including regularly scheduled overtime hours. These hours are scheduled at least 1 week in advance.
 - 2. First 40-hour employees do not have regular working hours. Their supervisors will schedule a basic workweek which provides for the 40 hours of work to occur during 6, but preferably 5, days of the administrative workweek.
- G. Corresponding Hours on Nonworkdays. Nonworkday hours directly corresponding to an employee's regular working hours. For first 40-hour employees with no regular working hours who travel on a nonworkday, travel time must correspond to the clock hours of the last preceding workday in order to be considered compensable hours of work.

VI. BASIC OVERTIME RULE UNDER FLSA

Under FLSA, overtime is only the actual time worked over 40 hours, including travel time counted as hours of work.

- A. Hours worked (over 8 hours in a day) are counted toward the basic 40 hours only and are not overtime under FLSA.
- B. Hours of leave, compensatory time, and holiday hours, when no actual work is performed, are not counted toward the number of hours worked under FLSA.

Travel during regular work hours is considered "hours of work" under FLSA, as well as Title 5.

VII. DETERMINING WHEN TRAVEL TIME IS HOURS WORKED

- A. Home to Work Travel. Travel to and from work is a normal incident of employment. Normal travel from home to work, within the limits of the official or temporary duty stations, is not counted as hours worked. Certain situations exist where an employee may perform an activity as a requirement of APHIS while traveling from home to work which could result in such travel time being considered as hours worked. See tables in Attachment 2 for these examples.
- B. Travel as a Passenger or Driver Within the Limits of the Official Duty Station.
 - 1. An employee may count as hours worked the time spent either as a passenger or driver in authorized travel as part of a job assignment, during the workday or during corresponding hours on a nonworkday.
 - 2. Employees traveling within the official duty station, before

or after regular working hours, in a job assignment that serves to extend the regular workday, may count the travel time as hours worked.

3. Normal commuting travel and bona fide meal periods are not included as hours worked.

See table in Attachment 3 for additional examples.

C. Travel Outside the Official Duty Station.

1. Time spent in travel outside the official duty station, during regular working hours and corresponding hours on nonworkdays, is counted as hours worked. Bona fide meal periods and waiting time at common carrier terminals of more than 45 minutes prior to scheduled departure time are not included as hours worked.
2. Travel outside regular working hours is counted as hours worked in the following cases:

a. Work Performed While Traveling.

- (1) Conveyance Operator. Duties an employee is required to perform while traveling are counted as hours worked. The nature of the work and requirements to perform it should be documented on job descriptions, travel orders, activity reports, or other such records. Time spent operating or assisting in the operation of a conveyance (such as cars, boats, trucks, and

airplanes) as a part of the job counts as hours worked, including time not spent in operating the conveyance. Normal commuting time must be deducted from such travel.

- (2) Conveyance Passenger. Time spent riding a conveyance as a passenger (not designated to operate or assist in operating it) is not counted as hours worked. Where the designated operator allows the passenger to operate the vehicle, the passenger's time is counted as hours worked. The designated operator may not count this time as hours worked.
- (3) Sleeping Periods. An employee working while traveling continuously for 24 hours or more may:
 - (a) Deduct from hours worked, authorized sleeping time of no more than 8 hours. This applies when adequate sleeping facilities are provided, and the employee has an uninterrupted period for sleeping.
 - (b) Count as hours worked interruptions, of the sleeping period, by a call to duty. Maintain appropriate entries, regarding such interruptions, in the log book or on activity reports.
 - (c) Count the entire 24-hour period as working

time when at least 5 hours of uninterrupted time are not provided for sleeping.

- (4) Off-duty Periods. An employee may not count as hours worked, off-duty hours used for personal purposes. EXAMPLE: The driver of a car ends travel at 6 p.m. to find a place to stay for the night and resumes travel at 8 a.m. the next morning. The period between 6 p.m. and 8 a.m. is not counted as hours worked.

b. Travel on a 1-day Assignment.

- (1) Travel as a passenger to and from a temporary duty station outside the limits of the official duty station, during the same calendar day, is considered part of the duties for the day. Authorized travel in this instance is counted as hours worked. (Bona fide meal periods, commuting time, and excess waiting time at common carrier terminals outside regular working hours are not included in hours worked). See the table in Attachment 4.
- (2) An employee driving a passenger vehicle from home to the temporary duty station outside regular working hours (including corresponding hours on a nonworkday) may count as hours worked only the time traveled in excess of normal home to work travel.
 - (a) This deduction of normal home to work travel also applies when the driver of a passenger vehicle picks up and drives another employee (or group of employees) directly to a temporary duty station, provided APHIS did not specifically require the employee to do so in writing.
 - (b) If APHIS requires the driver to pick up a passenger, home to work travel and return is considered hours worked. Such activity must be documented.

c. Overnight Travel Away From the Official Duty Station.

Authorized travel as a passenger requiring one or more nights outside the official duty station is considered "hours of work" when the work is performed during:

- (1) Regular working hours on a regular workday, excluding bona fide meal periods; or
- (2) Hours on a nonworkday corresponding to the employee's scheduled clock hours of work on regular workdays, excluding bona fide meal periods. Time spent waiting at a common carrier terminal in excess of 45 minutes (occurring during corresponding hours on nonworkdays) is not included in hours of work. See the table in Attachment 5.

D. Special Situations.

1. Travel by Mode of Transportation Other Than that Selected by APHIS. An employee who for personal reasons, such as an aversion to flying, does not use the selected means of transportation, will be credited with the lesser of:
 - a. The portion of travel time to be considered working time under this Directive; or
 - b. The portion of estimated travel time that would have been considered working time under this Directive had the employee used the mode of transportation selected by APHIS. (Refer to applicable provisions of APHIS Directive 351.1 to determine estimated travel time.)
2. Travel at a Time Other than that Selected by APHIS. Officials ordering travel are responsible for determining reasonable time limits for authorized travel. Travel away from an employee's official duty station should be scheduled within the employee's regularly scheduled workweek whenever possible. When an employee travels for personal reasons at a time other than that selected by the supervisor, travels by an indirect route, or interrupts travel for personal convenience, that employee will be credited with the lesser of:
 - a. The portion of actual travel time considered working time under this Directive, or
 - b. The portion of estimated travel time that would have been considered hours worked had the employee traveled at the time and by the route selected by the ordering official. (Refer to applicable provisions of APHIS Directive 351.1 to determine estimated travel time.)
3. Travel Involving Two or More Time Zones. When travel involves two or more time zones, the time zone at the point of the first departure for the workday will be used to determine whether travel was performed during regular working hours (or during corresponding hours on nonworkdays).

EXAMPLE: If an employee begins travel on Monday in Washington, D.C., with a short stopover in Denver, Colorado, and then travels to Los Angeles, California, later that same day, the Eastern time zone (point of first departure) will be used to determine whether the travel was performed during the employee's regular working hours. If the same employee later returns from Los Angeles to Washington, D.C., on Saturday (a nonworkday), the Pacific time zone will be used to determine whether the travel was performed by the employee during hours which correspond to regular working hours.

VIII. COMPARISON OF CONDITIONS OF TRAVEL OUTSIDE REGULAR WORKING HOURS UNDER FLSA AND TITLE 5

Review the following conditions under both FLSA and Title 5 to determine when travel outside regular working hours is hours of work.

- A. Travel Time Outside Working Hours Under FLSA. Authorized travel time outside regular working hours is "hours of work" under FLSA if any employee:
 1. Performs work while traveling (including work associated

duties such as driving a vehicle, as required by APHIS),

2. Travels as a passenger to a temporary duty station and returns the same calendar day, or
 3. Travels as a passenger by any means of conveyance on nonworkdays during hours which correspond to his/her regular working hours.
- B. Travel Outside Working Hours Under Title 5. Travel away from the official duty station, and performed outside the hours of the scheduled tour of duty, is compensable as work only if:
1. Work is actually performed,
 2. It is incident to travel which involves the performance of work while traveling,
 3. It is carried out under such arduous and unusual conditions that it is inseparable from work, or
 4. It results from an event which would not be scheduled or controlled administratively (for example, emergency relief in mandatory inspection activities).

IX. RETROACTIVE PAY

FLSA coverage of Federal employees became effective on May 1, 1974.

- A. Claims. Claims for retroactive overtime pay under FLSA should include supporting documents such as activity reports, travel vouchers, and Time and Attendance (T&A) Reports (both original and corrected T&A's with supervisor's signature). Send these through channels to the following locations:

OFFICES	FORWARD CLAIMS TO:
All Field Offices. Northern Region, VS and Northeastern Region, PPQ located in the Washington, D.C. Metropolitan Area.	Classification Services, Field Servicing Office (FSO) Minneapolis, Minnesota
All Washington, D.C. Metropolitan Area offices except Northern Region, VS and Northeastern Region, PPQ.	Personnel Operations Support Office Human Resources Division Hyattsville, Maryland

- B. Statue of Limitations. Valid claims for back wages will be settled administratively, provided they are received within 6 years from the date the claim first accrued.

X. QUESTIONS

Forward any written questions concerning FLSA, through appropriate channels, to Classification Services, FSO, for field employees, and to the Personnel

Operations Support Office, Human Resources Division, for employees in the Washington, D.C. Metropolitan Area.

/s/ James O. Lee, Jr. /s/

Acting Administrator

DISTRIBUTION: G03

ORIGINATING OFFICE: HRD - CSC

PLEASE SEE HARD COPY OR CONTACT MSD, DOCUMENTS MANAGEMENT BRANCH, THROUGH
FTS2000 ON 301-436-5524 FOR THE PAPER COPY OF THE FOLLOWING IMAGES.

Attachments

1. Nonexempt Employees under FLSA
2. Home to Work Travel as "Hours of Work" under FLSA
3. Travel within Limits of the Official Duty Station
4. Travel on a 1-Day Assignment
5. Travel Away from the Official Duty Station